

BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA
CASE NO.: 03-14

INQUIRY CONCERNING JUDGE SUPREME CT. CASE NO. SC04-1
JAMES E. HENSON;

_____/

FINDINGS, CONCLUSIONS AND RECOMMENDATIONS
BY THE HEARING PANEL OF THE JUDICIAL QUALIFICATIONS COMMISSION

The Hearing Panel of the Judicial Qualifications Commission ("JQC") respectfully submits the following Findings, Conclusions and Recommendations pursuant to Article V, § 12(a)(1), (b) and (c), of the Florida Constitution.

Judge James E. Henson, a Circuit Judge of the Ninth Judicial Circuit of Florida, was charged by the Investigative Panel of the JQC with certain violations of the Code of Judicial Conduct arising from his conduct in his prior position as a county judge of Orange County and with further charges concerning violations of the Rules of Professional Conduct governing attorneys. Thus the charges concern Judge Henson's conduct as both a lawyer and as a county judge. There are no charges concerning his more recent conduct as a circuit judge.

Judge Henson was initially elected to the position of county judge in Orange County. He served the term of that position which ended on January 5, 2001. Judge Henson ran for re-election during 2000 but was defeated. He returned to the practice of law doing criminal defense work and again ran for a new judicial post as a circuit judge in the 2002 election. He was elected to the position of circuit judge effective January 5, 2003, and remains in that position today. As a lawyer, Judge

Henson had always specialized in criminal defense work. (T. 340).

Generally, the Investigative Panel charged that Judge Henson engaged in the practice of law while he was still in office as a county judge and that he also engaged in other misconduct while a lawyer during the intervening period between his two judicial posts. The charges primarily concerned a criminal case in which Diana M. Jimenez was the defendant. Ms. Jimenez was intoxicated and struck another vehicle. (T. 31). Two deaths and other injuries resulted. Charges of DUI manslaughter and other related crimes were filed and if convicted, Ms. Jimenez faced a jail term of well over 30 years. (T. 31,43). Judge Henson represented her and signed a contract on December 20, 2000, calling for a \$40,000 "nonrefundable retainer fee." (T. 37-39). The down-payment on the fee was \$15,000 in the form of a check delivered to him on December 20, 2000, but not deposited by him until January of 2001. (T. 348,369). Judge Henson admitted he interviewed Diana Jimenez and gave her legal advice during December of 2000. (T. 345,349,353). Diana Jimenez also testified that Judge Henson gave her legal advice in December 2000, but stated that Judge Henson also told her he was still in office and could not yet represent her "in court." (T. 38).

The charges against Judge Henson were set out in the Notice of Formal Charges dated December 17, 2003, and served January 6, 2004. Several of the charges in the initial Notice were

formally abandoned by the Investigative Panel before the hearing actually began on Tuesday, October 12, 2004. The Formal Charges were served on January 6, 2004, and were signed by General Counsel to the Investigative Panel, Thomas MacDonald, and Special Counsel to the Investigative Panel, Lanny Russell. A JQC Rule 6(b) hearing occurred before the Investigative Panel on October 10, 2003, at which Judge Henson appeared and chose to testify under oath. (Exh. 10).

The formal charges are here quoted except for the several charges which were abandoned by the Investigative Panel during the pretrial procedures which included discovery and defensive motions. The two counts which actually proceeded to hearing and the rulings of the Hearing Panel thereon are as follows:

CHARGE:

COUNT ONE - MISCONDUCT WHILE A JUDGE

1. In late 2000, while you were a county judge, you asked Rogelio Candelaria, a bail bondsman, to arrange a meeting between you and Dr. Alberto Jimenez, whose daughter, Diana M. Jimenez, was facing a charge of DUI manslaughter.
2. On or about December 18, 2000, while you were a county judge, you met with Dr. Jimenez, who had previously retained Steve Jablon, Esq., to represent Diana Jimenez. The purpose of the meeting was for you to be retained in place of Mr. Jablon. At the meeting, you persuaded Dr. Jimenez to discharge Mr. Jablon and to retain you.
3. At the meeting with Dr. Jimenez, on or about December 18, 2000, in Mr. Candelaria's office, and while you were a county judge, you accepted a fee of \$15,000

from Dr. Jimenez for the representation of his daughter.

4. On or about December 20, 2000, while you were a county judge, you were present in the courtroom at a hearing to set bond for Ms. Jimenez.

PANEL RULING: Guilty as charged. Judge Henson admitted guilt with an explanation on this charge.

COUNT TWO - MISCONDUCT WHILE A LAWYER

A. Advice to Clients to Leave Jurisdiction

5. You represented Diane M. Jimenez, who was arrested on December 12, 2000, for DUI manslaughter and other related charges. In or about September or October, 2001, while Ms. Jimenez was released from jail on a \$100,000 bond, you met with her and her father and discussed the possibility of Ms. Jimenez fleeing to Columbia, and you advised her to do so.

PANEL RULING: Guilty as charged. Judge Henson denied this charge.

6. You represented Jerry Lee Thompson, who was arrested on April 29, 2001 for (i) unlawfully carrying a concealed handgun; (ii) unlawfully possessing 10 grams or less of marijuana; and (iii) using or possessing drug paraphernalia. In or about the summer and fall of 2001, while Mr. Thompson was released from jail on a \$25,000 bond, you advised him to flee to Mexico to avoid the charges he faced.

PANEL RULING: Not Guilty. Judge Henson denied this charge.

7. You represented Hector Rodriguez, Jr., who was arrested on March 14, 2001, for sexual battery charges. In or about January 2002, while Mr. Rodriguez was released from jail on a \$75,000 bond, you advised him to flee the jurisdiction, which he did.

PANEL RULING: Not Guilty. Judge Henson denied this charge.

B. Inadequate Representation of Clients

8. In the course of representing Ms. Jimenez, you failed to...(vi) communicate the State's settlement offer to Ms. Jimenez of 10 or 12 years imprisonment, which was less than the 16 years to which she was later sentenced. (Subsections (i), (ii), (iii), (iv) and (v) of this charge were withdrawn by the Investigative Panel.)

PANEL RULING: Not Guilty. Judge Henson denied this charge.

(Formal Charges Continued)

The acts described above, if they occurred as alleged, were in violation of:

- (1) Cannons 1, 2, 3 and 5 of the Code of Judicial Conduct, which were then applicable to you as a county judge, and
- (2) Rules 4-1.1, 4-1.2(d), 4-1.3, 4-1.4, 4-8(4)(a), 4-8.4(b), and 4-8.4(c), Rules of Professional Conduct, which were then applicable to you as a lawyer and member of The Florida Bar.

Further, these acts, if they occurred as alleged, would impair the confidence of the citizens of this state in the integrity of the judicial system and in you as a judge, would constitute conduct unbecoming a member of the judiciary, could demonstrate your present unfitness to hold the office of judge, and could warrant discipline, including removal from office, and discipline as an attorney.

Judge Henson filed his Answer to the Notice of Formal Charges and so far as relevant hereto, the Answer was as follows:

ANSWER

Paragraph 1. Admitted.

Paragraph	2.	Admitted that I met with Dr. Jimenez on December 18, 2000. Remainder of paragraph denied.
Paragraph	3.	Admitted.
Paragraph	4.	Admitted.
Paragraph	5.	Admitted that I represented Diana not (Diane) Jimenez. Denied that I ever suggested or approved of Ms. Jimenez fleeing to Columbia.
Paragraph	6.	Admitted that I represented Jerry Lee Thompson in various cases. Denied that I ever advised him to flee to Mexico.
Paragraph	7.	Admitted that I represented Hector Rodriguez. Admitted Mr. Rodriguez was released from jail on \$75,000 bond. Denied that I advised him to flee the jurisdiction.
Paragraph	8(vi)	Denied.

In advance of the hearing, counsel entered into Factual Stipulations on September 30, 2004, as follows:

STIPULATIONS

1. James Henson was an Orange County judge from January, 1996 until January 5, 2001.
2. After serving as a county judge, James Henson practiced criminal defense law until January, 2003.
3. James Henson has been a circuit judge in Orange County since January, 2003.
4. James Henson represented Diana M. Jimenez, who was arrested on December 16, 2000, for DUI manslaughter and other related charges in Osceola County Case No. CR00-2971.
5. In December 2000, while Mr. Henson was a county judge, Rojelio Candelaria, a bail bondsman, arranged a meeting between Mr. Henson and Dr. Alberto Jimenez, whose daughter Diana Jimenez was charged with DUI manslaughter.

6. On December 20, 2000, Mr. Henson met with Dr. Alberto Jimenez regarding the representation of Diana Jimenez. At this meeting, Mr. Henson entered into a contract with Dr. Jimenez for the representation of Diana Jimenez.
7. At the meeting between Dr. Alberto Jimenez and Mr. Henson on December 20, 2000, Mr. Henson accepted a retainer fee of \$15,000 from Dr. Jimenez for the representation of Diana Jimenez.
8. James Henson's purpose of meeting with Dr. Alberto Jimenez in December, 2000 was to discuss Mr. Henson's representation of Diana Jimenez.
9. James Henson agreed to represent Diana Jimenez while Mr. Henson was a county judge.
10. James Henson was present behind the rail in the Osceola courtroom on December 22, 2000 at the hearing to set bond for Diana Jimenez. At this hearing, only Attorney Robert Nesmith appeared of record on behalf of Diana Jimenez.
11. In May 2001, during Mr. Henson's representation of Diana Jimenez on DUI manslaughter and other related charges, Michael Saunders, Esq., the Assistant State Attorney prosecuting Ms. Jimenez, communicated a plea bargain offer to Mr. Henson that included a cap of 12 years imprisonment of Ms. Jimenez based on a plea to these charges.
12. James Henson represented criminal defendant Hector Rodriguez, Jr., who was arrested on March 14, 2001 for sexual battery charges. Mr. Rodriguez was released from jail on a \$75,000 bond. (Respondent's stipulation is to facts only, not admissibility or relevance.)
13. Mr. Rodriguez failed to appear for trial on January 22, 2002 and a capias was issued for his arrest. This capias remains outstanding. (Respondent's stipulation is to facts only, not admissibility or relevance.)

14. James Henson represented Jerry Lee Thompson, who was arrested on April 29, 2001 for drug and firearms charges.

The Record

The pleadings are already before the Court. The transcript of the testimony before the Hearing Panel is in four volumes and will be designated as (T. ____). The documentary evidence is contained in a notebook which is entitled Factual Stipulations, Special Counsel's Exhibits and Respondent's Exhibits. Documentary evidence will be designated by a description of the document and the number of the exhibit if applicable. Portions of video depositions of two witnesses were played before the Hearing Panel after agreements and rulings as to which specific parts of the depositions were admissible. This deposition testimony was transcribed by the court reporter and is included in the hearing transcript.

Pre-Hearing Rulings

Judge Henson filed a motion to dismiss for lack of subject matter jurisdiction. This motion was denied in the Panel's prehearing conference order of October 5, 2004. A motion for partial summary judgment and various motions in limine were also ruled upon. Summary judgment was denied and the in limine motions were granted in part. As a result of the Jimenez case, complaints were made to the Florida Bar by Dr. Jimenez

concerning Judge Henson's conduct. Facts concerning the Bar proceedings were reflected in various documents which the Investigative Panel proposed to offer into evidence. Based upon Judge Henson's objections and arguments, all Florida Bar documents were excluded from evidence before the hearing began. (Prehearing order of October 5, 2004).

The Hearing and the Panel's Rulings

The hearing occurred in the Orange County Courthouse, Orlando, Florida, on October 12 and 13, 2004. (T. 1-570). The panel was composed of Judge James R. Wolf, Chair, Judge Peggy Gehl, lay members Reverend Randolph Bracy and Shirley Bowne' and attorneys Martin Garcia and Perry Odom. Attorney John Beranek was counsel to the Hearing Panel. The Investigative Panel/Prosecution was represented by attorney Lanny Russell who was assisted by attorney Scott Kalil. Judge James Henson was represented by attorney Kirk Kirkconnell. Judge Henson was present in the courtroom throughout the hearing. The entire proceeding, except for the Panel deliberations, was transcribed by a court reporter and the parties have been furnished with copies of the transcript.

The findings of guilt contained in these Findings, Conclusions and Recommendations were each determined by at least a two-thirds vote of the six member Hearing Panel in accordance

with Article V, § 12(b), of the Florida Constitution and Rule 19 of the Judicial Qualifications Commission rules. In the view of the Hearing Panel, each of the affirmative findings herein are supported by clear and convincing evidence in accordance with In re: Ford-Kaus, 737 So. 2d 269 (Fla. 1999); In re: Graziano, 696 So. 2d 744, 753 (Fla. 1997); and In re: Davey, 645 So. 2d 398, 404 (Fla. 1994). Although the vote of the six member panel met the requirement of two-thirds, two members dissented from the finding of guilt on Count II.

The prosecution presented the testimony of Diana Jimenez by video deposition and the testimony of Dr. Alberto Jimenez by video deposition. Portions of the deposition of Maria Jimenez (the mother of Diana Jimenez) were read into evidence. Portions of Judge Henson's deposition were also read into evidence. The prosecution presented extensive live testimony of attorney Robert Nesmith. (T. 104-199). The deposition of Jerry Lee Thompson was admitted over objection. (T. 220-246). Motions by Judge Henson in the nature of requests for judgment of acquittal or directed verdict were argued and denied. (T. 318-323). Judge Henson testified at length (T. 335-457) and presented the testimony of three character witnesses, Donald Henderson, Peyton Lea and Circuit Judge Jose Rodriguez, along with six letters attesting to his good character. Michael Saunders, the

Assistant State Attorney who prosecuted the Jimenez case, testified as a rebuttal witness called by the Investigative Panel. All the testimony was initially elicited by counsel but the members of the Hearing Panel themselves also closely questioned most of the live witnesses. (T. 149-189,403-444, 465,482-486,513-522). After the hearing, a motion to supplement the record was filed and this motion is hereby denied.

Recommended Removal

As previously indicated, Judge Henson has been found guilty of two serious charges growing out of the Jimenez case. As will be further detailed and explained herein, the Panel concludes that Judge Henson's actions were inconsistent with the responsibilities of a judicial officer and that Judge Henson is unfit to hold judicial office. Thus the Hearing Panel recommends to the Florida Supreme Court that Judge Henson be found guilty and that he be removed from office. Although the conduct in question was pre-judicial as to Judge Henson's present position on the circuit court, this conduct is still grounds for removal under In re: Davey at p.402-403, and cases there cited.

The Panel concludes that Judge Henson has been untruthful in his testimony before the Hearing Panel. However, in accordance with In re: Davey, at p.405-407, the lack of candor

before this Hearing Panel is not considered as a separate charge and the findings and recommendations herein are based solely on the conduct charged in the Notice of Formal Charges.

Findings of Fact

The two charges on which the Panel has found against Judge Henson concern the Jimenez criminal case designated as Osceola County Case No. CR00-2971. Diana Jimenez was a young woman from Columbia who was a Florida resident. She was involved in a December 16, 2000, automobile accident in which two people were killed. She was college educated and spoke English and Spanish. (T. 73). She came to the United States with a valid Colombian passport and had this passport in her possession at all times. (T. 73). The passport had not been removed from her possession when she was arrested on December 16, 2000. (T. 54). Diana Jimenez had close relatives in Columbia and had resided there. (T. 54,73). She had been in a bar earlier in the evening of December 16, 2000, and was driving her own car home when she struck another vehicle occupied by the Znerch family. (T. 73). Two individuals from the Znerch family were killed and other family members were injured. (T. 73). Diana Jimenez left the scene of this accident involving death and was later arrested and tested positive for driving while intoxicated. (T. 45).

She also gave an incriminating videotaped statement to the police officers. (T. 45).

She was charged with DUI Manslaughter and numerous related charges and faced a jail sentence of over 30 years. Her father, Dr. Alberto Jimenez, initially hired an attorney named Jablon to represent her. (T. 35). After hearing favorable comments about Judge Henson including his status as a judge, Dr. Jimenez hired him and terminated the Jablon representation. (T. 259-260). Although Henson had been defeated in his re-election bid in November of 2000, he cleared his judicial calendar at the courthouse and left early (December 15, 2000) from his judicial duties. (T. 343). He stated he was very concerned about earning a living. (T. 343,374,375).

When Dr. Jimenez first contacted Judge Henson, Henson told him that he was still a judge and would be unable to actively participate in the case until after his term ended in January of 2001. (T. 38). Henson learned all of the facts concerning Diana Jimenez because he met and had telephone conversations with her father and he also met personally with Diana Jimenez. Shortly after signing the contract and receiving the initial \$15,000 check from Dr. Jimenez on December 20, 2000, Henson went to the county jail where Diana Jimenez was in custody. (T. 36-37). He signed-in as the attorney representing her and met with

her. (T. 371,372). During this meeting, Diana Jimenez also signed the contract and discussed with Henson the necessary information which would be used in the upcoming bond hearing. (T. 36-37). This interview concerned the details of Diana's home and ties with the community. (T. 36). Details concerning her family in the United States and Columbia were discussed. (T. 36). Judge Henson learned that Diana Jimenez still had a Columbian passport which was valid and that she still had several close relatives in Columbia. (T. 73-74). He was further obviously aware that she had access to family financial resources. The subject of Jimenez possibly fleeing to Columbia was discussed on several occasions thereafter. (T. 43,44,45). Henson and Diana made a trip to the bar to look for witnesses in January of 2001, and Henson again asked her about whether she still had her Columbian passport. (T. 52-53). She told him she did. (T. 54).

Henson did not handle the bond hearing for Ms. Jimenez. Instead, he asked a fellow attorney, Robert Nesmith, to handle the matter because he, Henson, had a "conflict" and could not be there. (T. 107-108). Judge Henson introduced attorney Nesmith to Jimenez only at the bond hearing which was held on December 22, 2000. (T. 268). This hearing was presided over by Judge Reginald Whitehead. Diana Jimenez was represented by Mr.

Nesmith and Judge Henson sat in the audience along with Dr. Alberto Jimenez, the defendant's father who was also a client of Judge Henson. Judge Henson was unable to give a reasonable explanation for his presence at the bond hearing. A \$100,000 bond was granted and when the hearing ended, Judge Henson went forward to the bench and secured certain papers from Judge Whitehead which were necessary to secure the bond. (T. 270).

Diana Jimenez was released on bond after the December 22, 2000, hearing and became pregnant shortly thereafter. (T. 44). She was eventually sentenced to 16 years in state prison based on a negotiated plea. Her sentence was imposed on December 19, 2001, and included numerous restrictions and 10 years probation. She filed various motions contesting her sentence, including a Rule 3.850 motion, all of which were denied. (T. 51-52). Her deposition was taken in this JQC proceeding at the Gadsden Correctional Institute where she was serving her 16 year sentence. (T. 31-32).

Mr. Nesmith was a friend and a fellow attorney who had known James Henson for years. They were previously in practice together and began practicing together again after Judge Henson lost his election. Dr. Alberto Jimenez was a physician practicing in Hammond, Indiana. Dr. Jimenez came to the United States in 1977 and was a successful physician. He and his wife

were both very concerned and supportive parents as to their daughter Diana Jimenez.

Count I

Dealing first with Count 1, Judge Henson admitted his guilt as to this charge but contended that it was merely a technical violation for which he should, at most, be reprimanded. (T. 374,375,377 and R. Answer ¶1-4). His explanation was that he had lost the election and had cleared up his judicial calendar and totally left the courthouse. Friends at the courthouse had given him a going-away party. (T. 343). He testified he was having nothing further to do with the judiciary at that point in time (December 15, 2000) and considered himself to be on vacation. Despite his vacation status, Judge Henson recognized that he was still legally a County Court judge and that he should not have been engaged in the practice of law in any fashion. (T. 375-377).

Judge Henson's own conduct points out the fact that he knew he was still a judge. He received a \$15,000 check in December but did not cash it until January, after he believed he would be out of office. (T. 369). He told Diana Jimenez he was still a judge and could not act as a lawyer but he still gave her advice as a lawyer. He attended a hearing but sat in the audience while Mr. Nesmith argued her application for a bond. Judge

Henson had already interviewed the client in the jail and secured the information from her which he passed on to attorney Nesmith for use at the bond hearing. If necessary, Judge Henson could have conferred with Nesmith during the hearing. The Panel concludes that Judge Henson was indeed engaged in the practice of law while he was still a county judge. He could have resigned early from his judicial office but did not do so.

Based on the clear and convincing evidence and the admissions of guilt, the Panel finds Judge Henson to be guilty on Count I. The "vacation" explanation has been considered but the Panel concludes that a judge who is defeated in an election still has a duty to refrain from the practice of law and serve out his term. An incumbent judge who begins practicing law too early is not a matter that can be passed over as unimportant. Indeed, this excuse by Judge Henson is simply not sufficient. He knew he could not practice law and he admits that he began practicing early in order to earn a fee. He testified he was worried about returning to the private sector and being able to pay his mortgage and other expenses. (T. 407,413,414). The fee involved in the Jimenez case was a nonrefundable \$40,000 with \$15,000 as the down-payment. Installments of \$2,500 per month were paid by Dr. Jimenez until Dr. Jimenez finally refused to make the last payment and the parties engaged in a dispute over

the fee in which Dr. Jimenez demanded a partial refund. (T. 267).

The Jimenez case was Judge Henson's first case upon his return to law practice. The Panel has also found Judge Henson guilty of misconduct as an attorney in this same representation. This additional finding of guilt is thus part of the same pattern of misconduct in that Judge Henson should not have counseled Diana Jimenez to avoid prosecution by going to Columbia. Indeed, incumbent Judge Henson should not have been advising defendant Jimenez or her father in any way whatsoever at this point in time.

Thus the Panel finds Judge Henson guilty on this Count I and rejects his suggestion that the penalty be limited to a reprimand. Although this charge alone might well have warranted only a reprimand, in conjunction with Count II, the misconduct is much more serious.

Count II

The testimony on the issue of whether Judge Henson advised Diana Jimenez to avoid prosecution by fleeing to Columbia was in dispute. Judge Henson testified that although the subject of Columbia came up, he never advised or counseled Jimenez to flee. Judge Henson stated this position repeatedly throughout his testimony. (T. 352,353,387,388,389,392,393). However, Diana

Jimenez, Dr. Alberto Jimenez and attorney Nesmith testified to facts supporting the charge and the Panel has rejected the testimony of Judge Henson and found the testimony of the other three witnesses on this issue to be credible and believable. The Panel is charged with the responsibility of resolving the conflicts in evidence. The Panel thus accepts the testimony of Diana Jimenez, Dr. Alberto Jimenez and Mr. Robert Nesmith and finds this testimony to be clear and convincing.

Diana Jimenez testified on video deposition and was subjected to cross examination by counsel for Judge Henson. Diana Jimenez testified that although Judge Henson did not specifically tell her to flee to Columbia, that Judge Henson gave her to understand on more than one occasion that fleeing to Columbia was an option which she should consider. (T. 45,46, 67,70,71,76,77). Diana Jimenez stated that she told Judge Henson that she did not wish to flee to Columbia and have to be looking over her shoulder for the rest of her life. (T. 44). She further stated that Judge Henson told her that Columbia had no extradition treaty and therefore she would not be the subject of a search by U.S. authorities in Columbia. (T. 45,46,76). She stated that he further told her that this was not the kind of charge on which a search would be mounted for her in a foreign country. (T. 76). Ms. Jimenez stated that Judge Henson

was very interested in learning that she had a valid passport from Columbia and that she had close relatives in Columbia who would cooperate with her if she went there. (T. 69-70). He discussed this with her more than once meetings in December, January and August.

There was disagreement between Judge Henson and Diana Jimenez concerning what plea offers were made by the State and when these offers were conveyed to Jimenez. The State initially offered a 10-12 year cap on a proposed negotiated plea. This offer to Henson occurred in May of 2001 and was paragraph 11 of the prehearing stipulations. It was uncertain whether Henson clearly and directly conveyed this 10-12 year plea offer to Diana Jimenez. In any event, after the Assistant State Attorney discussed the case further with the family of the deceased victims, the 10-12 year plea offer was withdrawn and the 16 year offer was substituted. (T. 41-43). Diana Jimenez and her father did not believe Judge Henson was ready to defend her in a trial and she thus believed that he was actually counseling and advising her to flee and avoid prosecution and thereby avoid a trial. (T. 70,284). The plea hearing actually occurred on October 18, 2001, and Ms. Jimenez testified that Henson strongly urged her to take the 16 year offer and avoid going to trial. Due to the absence of clear evidence, the Panel has rejected the

charge on Henson's failure to advise his client of the plea offer.

A meeting had occurred in August of 2001, in which Judge Henson, Dr. and Mrs. Jimenez and Diana Jimenez were in attendance and participated. (T. 41). There was conflicting testimony as to whether Judge Henson used the word "Columbia" during this meeting. Henson denied even using the word but all of the other witnesses testified that he did bring up the subject of "Columbia" and the subject of extradition in the August meeting. (T. 41-43,86).

Maria Jimenez was the mother of Diana Jimenez and she attended the August 2001 meeting. Maria Jimenez spoke very little English and a portion of her deposition was read over objection. She remembered that Judge Henson did use the word "Columbia" and this was one of the few words she understood. (T. 86).

Dr. Alberto Jimenez testified to numerous meetings and telephone conversations he had with Judge Henson regarding his daughter's criminal prosecution. The doctor testified that he attended the August 25, 2001, meeting where there were discussions regarding the State having made an initial plea offer, withdrawn it and then come back with a higher 16 year offer. Judge Henson said at that time that if they went to

trial, Diana Jimenez would probably be sentenced to something in the vicinity of 35 years. (T. 275-278). Henson and Diana Jimenez both stated that at this point Diana Jimenez, who was pregnant, began crying and became very emotional. (T. 44).

Dr. Jimenez testified that Judge Henson later called him on the phone and suggested that they could put Diana on a plane to Puerto Rico and then have her flown on to Columbia. (T. 279,299). Dr. Jimenez stated that he told Judge Henson that Columbia did have an extradition treaty and that Dr. Jimenez definitely wanted his daughter to go to trial and not to consider fleeing to Columbia. (T. 279,280,299). Dr. Jimenez stated that he remembered that at the meeting of August 25, 2001, his wife had asked him about Judge Henson's comments concerning extradition. (T. 281). Dr. Jimenez filed a complaint with The Florida Bar concerning Judge Henson but this complaint was not made for an extended time beyond the actual sentencing of Diana Jimenez. The details of the Bar proceeding were excluded based on objections from the Judge Henson's counsel.

Robert Nesmith was a criminal defense lawyer and a friend of Judge Henson. They had previously been in criminal defense practice together and planned on practicing together again after Henson lost his election. (T. 106). Judge Henson asked Nesmith

to handle the bond hearing because Henson said he had a "conflict" and could not be there. (T. 107,108). Henson got the necessary information for the bond hearing from his client, Diana Jimenez, and Judge Henson introduced Diana Jimenez to attorney Nesmith at the bond hearing. (T. 38).

At some subsequent time, Judge Henson and Mr. Nesmith were occupying the same office area and Nesmith testified that Henson invited him into his office and told him that he had advised Diana Jimenez to avoid prosecution by fleeing to Columbia. (T. 113,167-171). Nesmith said that Henson prefaced his comments by telling Nesmith that he would deny it if Nesmith ever told anyone about his statements. (T. 113-114).

Judge Henson later was reported to have told Nesmith that he had a connection with a new drug case in which the defense fees would be in the vicinity of \$200,000. (T. 122). Judge Henson then said he would refer this case to Nesmith and that he was attempting "to buy his silence." (T. 122,133,134). The testimony concerning buying Nesmith's silence was not specifically related to the mention of fleeing and the Panel does not rely upon this particular statement which Nesmith attributed to Judge Henson. Mr. Nesmith stated that at the time these comments were made he did not take them seriously and thought Judge Henson might have been joking. (T. 156-158).

However, the Panel does accept Mr. Nesmith's testimony that Henson told him that he had advised Ms. Jimenez to flee to Columbia to avoid prosecution. This testimony was consistent with what all of the other witnesses testified to except for Judge Henson.

Mr. Rajelio Candelaria was a bail bondsman whose name runs throughout all aspects of this controversy. Candelaria arranged the initial meeting between Judge Henson and Dr. Jimenez and Candelaria posted the bond on which Diana Jimenez was released. Candelaria was also the bail bondsman on the Thompson case and on the Rodriguez case in which Judge Henson is also charged with counseling his clients to flee. This Panel has found insufficient clear and convincing evidence concerning the assertions that Judge Henson also counseled defendant Thompson and defendant Rodriguez to flee the country to avoid prosecution. However, the Panel notes that Mr. Candelaria was also the bail bondsman in both of those cases. Thus the Panel was presented with three cases involving the same bail bondsman plus allegations that Judge Henson encouraged all of these clients to flee the jurisdiction to avoid prosecution.

Under Florida's Statutory law, fleeing the country to avoid prosecution after being released on bond is itself a crime and an attorney counseling a client to do so is in direct violation

of both his ethical duties and the criminal law of the state. See Section 843.15(a), Florida Statutes, and Rule 4-1.2, Florida Rules of Professional Conduct. Also see Taylor v. State, 752 So. 2d 85, 87 (Fla. 1st DCA 2000). (Failure to appear may constitutes a crime in and of itself). Indeed, Judge Henson well recognized that an attorney must emphatically advise a criminal client that he or she should not flee to avoid prosecution. There was no clear and convincing evidence presented as to what roll Mr. Candelaria actually played in the three cases, but the Panel is certainly troubled by his presence in regard to all three of these matters.

Recommendation

The Hearing Panel, after full consideration of all of the evidence and based on the standard of clear and convincing evidence as enunciated in In re: Davey, supra, concludes that Judge Henson has violated Canons 1, 2, 3 and 5 of the Code of Judicial Conduct which were applicable to him acting as a county judge during the term of his office. In addition, the Panel concludes that Mr. Henson, acting as an attorney, has also violated Rules 4-1.1, 4-1.2(d), 4-1.3, 4-1.4, 4-8(4)(a), 4-8.4(b), and 4-8.4(c) of the Rules of Professional Conduct which were applicable to Mr. Henson's practice of law during the period between his two judicial posts.

The Panel concludes that these violations will impair the confidence of the citizens of this state in the integrity of the judicial system and that these violations constitute conduct unbecoming a member of the judiciary. The Panel concludes that Judge Henson is presently unfit to hold the office of judge and therefore the Panel recommends to this court that he be found guilty and removed from office.

Counseling a client to commit a crime to avoid prosecution is an extremely serious matter and even Judge Henson admitted that if the subject of flight to avoid prosecution arises in the defense of a criminal defendant, it is the duty of the lawyer to emphatically advise against such a criminal act by the defendant. (T. 456). Despite his denials, the Panel concludes that Judge Henson did not provide his client with such advice. The Panel also concludes that Judge Henson was not actually prepared to go to trial in the Jimenez case. He had not taken depositions or done discovery. He had not adequately prepared the case through motion practice. He had secured an informal opinion from a single expert witness whose testimony was anticipated to be weak at best. (T. 427-429). Thus the Panel concludes that Judge Henson was not ready to proceed with a trial and this was a factor which motivated him to suggest to his client that the option of flight was available. He further

advised the client that she would not be extradited from Columbia.

The Hearing Panel, by a two-thirds vote, thus finds Judge Henson guilty and recommends that this court adopt these Findings, Conclusions and Recommendations and order removal. Judge Henson should also be held responsible for the costs of these proceedings to be determined initially by the Hearing Panel pursuant to Rule of Judicial Administration 2.140(c).

SO ORDERED this 18th day of January, 2005.

**FLORIDA JUDICIAL QUALIFICATIONS
COMMISSION**

By: /s/ James R. Wolf
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